



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 31, 2003

Ms. Cathy Duhart
Custodian of Records
Sinton Police Department
217 East Market Street
Sinton, Texas 78387

OR2003-5282

Dear Ms. Duhart:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185128.

The Sinton Police Department (the "department") received a request for the personnel file of a particular police officer.¹ You claim that the requested information is excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the department's procedural obligations under the Public Information Act (the "Act"). Section 552.301(b) of the Government Code provides that a governmental body that wishes to withhold requested information must "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request." Pursuant to section 552.301(e), the governmental body must, within fifteen business days of receiving the request, submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). Your letter to the requestor, which you have forwarded to this office, indicates that the department received this request

¹Because you have not submitted the request for information, we take our description from your brief.

on or shortly after July 14, 2002. However, you did not submit the information for our review until May 27, 2003 and did not request a ruling until May 28, 2003. Furthermore, you did not provide a copy of the written request for information. Thus, the department has failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.117 can provide a compelling reason to withhold information, we will address your arguments concerning this exception.

Section 552.117(a)(2) of the Government Code excepts from disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of a peace officer regardless of whether the officer requests confidentiality under section 552.024.² You indicate that the individual at issue was a licensed peace officer when the department received this request. Therefore, we agree that, under section 552.117(a)(2), the department must withhold the listed information concerning this individual. We have marked the type information that the department must withhold. The remainder of the submitted information is not excepted under section 552.117(a)(2) and may not be withheld on that basis. *Cf.* Open Records Decision No. 670 (2001) (providing that all governmental bodies covered by Public Information Act may withhold only home address, home telephone number, personal cellular phone number, personal pager number, social security number, and information that reveals whether individual has family members, of any individual who meets definition of "peace officer" set forth in article 2.12 of Texas Code of Criminal Procedure or "security officer" in section 51.212 of Texas Education Code, without necessity of requesting Attorney General decision as to whether exception under predecessor to section 552.117(a)(2) applies); *see also* Open Records Decision No. 673 (2001) (discussing two types of previous determinations issued by this office).

We note, however, that the remaining records include information concerning personal financial decisions made by the officer. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the common law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts

²"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 at 685 (Tex. 1976).

Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common law privacy but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983)*. For example, a public employee's allocation of his salary to a voluntary investment program or to optional insurance coverage that is offered by his employer is a personal investment decision and information about it is excepted from disclosure under the common law right of privacy. *See Open Records Decision No. 600 (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care)*. In addition, information related to an individual's mortgage payments, assets, bills, and credit history is protected by the common law right to privacy. *See Open Records Decision Nos. 545, 523 (1989)*. However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. *See Open Records Decision No. 600 at 10*. We have marked the information in the remaining records that constitutes personal financial information protected by the common law right of privacy and must be withheld under section 552.101 of the Government Code.

We also note that the remaining submitted information includes the officer's driver's license number. Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." We have marked the information that the department must withhold pursuant to section 552.130.

Finally, we note that the remaining information includes an e-mail address of a member of the public. Section 552.137 of the Government Code provides that "[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]." However, this section does not apply to a government employee's work e-mail address because such address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. We also note that section 552.137 does not apply to a business's general e-mail address or website address. We have marked the e-mail address that the department must withhold under section 552.137 unless its owner has affirmatively consented to its release. *See Gov't Code § 552.137(b)*.

In summary, the department must withhold the information we have marked as being excepted from disclosure under section 552.117(a)(2). In conjunction with section 552.101

and common law privacy, you must also withhold the personal financial information that we have marked. The officer's driver's license number must be withheld under section 552.130, and the marked e-mail address must be withheld under section 552.137. You must release the remainder of the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

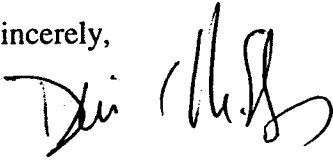
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis C. McElroy", written over a horizontal line.

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/sdk

Ref: ID# 185128

Enc. Submitted documents

c: Mr. Bobby D. Brown
P.O. Box 3968
Victoria, Texas 77903
(w/o enclosures)